(5)

No. 85-993

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

PAULA A. HOBBIE, *Appellant*,

v.

UNEMPLOYMENT APPEALS COMMISSION AND LAWTON AND COMPANY, *Appellees*.

On Appeal From The District Court Of Appeals Of The State Of Florida Fifth District

JOINT APPENDIX

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Referee's Decision:
Docket No. 84-14918U

FLORIDA DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY
UNEMPLOYMENT COMPENSATION APPEALS BUREAU

NOTICE OF DECISION OF APPEALS REFEREE

Claimant: APPELLANT
S.S. No.: 100-36-7461
Paula A. Hobbie
c/o 2360 Virginia Drive
Altamonte Springs, FL 32714

Employer:
No.: -439586-A
Lawton and Co.
500 N. Orlando Avenue, Ste. 1264
Winter Park, FL 32789

Jurisdiction: 443.151(4)(a) & (b) F.S.

IMPORTANT

This decision will become final unless within (20) calendar days after the date it is mailed, you file an application for review to the Unemployment Appeals Commission, Room 221, Ashley Bldg., 1321 Executive Center Dr., East, Tallahassee, Florida 32301.

Other copies mailed to:

☒ UCCO -3632-0
☐ MU * ☒ Emp.'s Rep.
☐ ASLO ** ☒ Emp.'s Atty.
*** ☒ Clt.'s Atty.

APPEARANCES

CLAIMANT: YES
EMPLOYER: YES

FINDINGS OF FACT

The claimant was employed from October 4, 1981 through June 1, 1984, by the employer, first as a trainee and then as an

assistant manager. In April, 1984, the claimant informed her manager that she was being baptised in the Seventh-Day Adventist Church and that she would no longer be able to work from sundown on Friday to sundown on Saturday, because that was considered their Sabbath. The store manager and the claimant worked out a compromise which allowed him to cover for the claimant on Friday nights and Saturday, in return for which she would work evenings and Sundays for the manager. The general manager's supervisor became aware of the situation and informed the general manager that no exceptions could be made to the standard scheduling policy for the company. The company does not allow any management personnel to take Friday nights or Saturdays off as a permanent day off, as these are traditionally their heaviest retail sales days. The claimant worked three of the six weeks between her compromise with the manager and May 28, 1984. On May 28, 1984, the claimant was informed that she could no longer work evenings and Sunday in return for being off on Friday evenings and Saturday. The manager advised the claimant to speak to the general manager, who, after conferring with the claimant and her minister, advised her that the company could not make any allowances to give the claimant special scheduling privileges. The claimant was told following a meeting on June 1, 1984, that she would either work the days she was scheduled to work or they would accept her resignation. The claimant refused to resign and on the evening of June 1, 1984 she was asked for her keys. The claimant had previously worked on Saturdays for over two years.

CONCLUSIONS OF LAW: The law provides that "misconduct connected with work" means an intentional act or course of conduct by the worker in violation of his duties and obligations to the employer.

The record and evidence in this case show that the claimant was discharged for refusing to work scheduled hours on Saturdays due to religious beliefs. The testimony presented at the hearing by the employer shows that the claimant had worked on Saturdays and Friday evenings for an extended period of time and that she had accepted that as a condition of hire. The testimony of the employer shows that the claimant was given

the opportunity to continue her employment by working her regularly scheduled hours. The testimony of the claimant has not established that the employer's requirements of her were unreasonable in the context of her position and prior employment. It has been held that the law cannot be readily construed to require an employer to discriminate against other employees in order to enable others to observe their Sabbath. In view of the testimony presented by the employer and the claimant, it must be held that the claimant was discharged from the job for misconduct connected with the work when she refused to work the hours scheduled for her. The employer's testimony has established that, although there was a temporary solution to the problem of covering for the claimant on Fridays and Saturdays, this solution could not be guaranteed as being of a permanent nature and that it would not interfere with the rights of the other employees in the store.

DECISION: The determination of the claims examiner dated June 19, 1984, is affirmed.

This is to certify that on this date, July 20, 1984, a copy of the above decision was mailed to the last-known address of each interested party.

By:/s/Mary Dougherty
Deputy Clerk

/s/J.D. Finkbohner
J.D. FINKBOHNER
Appeals Referee
Winter Park, Florida
July 20, 1984

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STATE OF FLORIDA
UNEMPLOYMENT APPEALS COMMISSION

U.A.C. Order No. 84-3061

IN THE MATTER OF:

PAULA A. HOBBIE
SS No. 100-36-7461
Claimant/Appellant

vs.

LAWTON AND COMPANY
Employer No. -439586A
Employer/Appellee

UCCO Orlando 3632-0-12117

ORDER OF UNEMPLOYMENT APPEALS COMMISSION

Upon review pursuant to Section 443.151(4)(c), Florida Statutes, it is found that the decision of the appeals referee is in accord with the essential requirements of law and is, therefore, affirmed.

It is so ordered.

UNEMPLOYMENT APPEALS COMMISSION

R. Carson Dyal, Chairman
Delois Baskin, Member
Charlie Harris, Member

This is to certify that on Sep. 11, 1984, the above Order was filed in the office of the Clerk of the Unemployment Appeals Commission, and a copy mailed to the last known address of each interested party.

By/s/Donna Johnson
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT JULY TERM 1985

CASE NO. 84-1491

PAULA HOBBIE

Appellant,

v.

UNEMPLOYMENT APPEALS COMMISSION
AND LAWTON & COMPANY,

Appellees.

NOT FINAL . . .

Decision filed September 10, 1985

Administrative Appeal from the Unemployment Appeals Commission.

Frank M. Palmour and Sharon Lee Stedman, of Rumberger, Kirk, Caldwell Cabaniss & Burke, Orlando, for Appellant.

Richard S. Cortese, Tallahassee, for Appellee Unemployment Appeals Commission.

John-Edward Alley and Joseph W. Carvin, of Alley and Alley, Chartered, Tampa for Appellee Lawton and Company.

PER CURIAM.

AFFIRMED.

COBB, C.J., UPCHURCH, F.J., and GOSHORN, G.S., Associate Judge, concur.

IN THE FIFTH DISTRICT COURT OF APPEALS
STATE OF FLORIDA

CASE NO. 84-1491

PAULA A. HOBBIE

Appellant,

vs.

UNEMPLOYMENT APPEALS COMMISSION AND
LAWTON AND COMPANY,

Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that PAULA A. HOBBIE, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the Fifth District Court of Appeals, State of Florida, affirming the ruling of the Unemployment Appeals Commission, entered on September 10, 1985.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

/s/Frank M. Palmour
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Joseph W. Carvin, Esquire, Alley and Alley, Chartered, Post Office Box 1427, Tampa, Florida, 33601, Counsel for Lawton and Company and Richard S. Cortez, Esquire, Ashley Building, Suite 221, 1321 Executive Center Drive East, Tallahassee, Florida, Counsel for Unemployment Appeals Commission.

/s/Frank M. Palmour
FRANK M. PALMOUR